

May 15, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2498**
Proposed Ordinance No. **2007-0018**
Parcel Nos. **142308-9184, 142308-9183, 142308-9185, 142308-9073**

NORTH BEND INDUSTRIAL PARK, LLC
Road Vacation Petition

Location: Southeast Tanner Road

Petitioner: **North Bend Industrial Park LLC**
c/o Bill Moffet
1911 Southwest Campus Drive, #733
Federal Way, Washington 98023
Telephone: (253) 232-0562

King County: Department of Transportation,
Road Services Division, *represented by*
Nicole Keller
201 S. Jackson St.
Seattle, Washington 98104-3856
Telephone: (206) 296-3731
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation, subject to conditions
Department's Final:	Approve road vacation, subject to conditions
Examiner's:	Approve road vacation, subject to conditions set forth in proposed ordinance

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item No. V-2498 was received by the Examiner on February 15, 2007.

PUBLIC HEARING:

After reviewing the Department's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2498 was opened by the Examiner on March 7, 2007, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, WA 98104 and was continued to March 21, 2007. The hearing was then continued administratively for receipt of revised ordinance language, which was received March 22, 2007. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	Portion of SE Tanner Road
Right of way classification:	B
Area:	47,621 square feet
Compensation:	\$6,786.00

2. The Notice of Hearing on the Department's report was given as required by law, and a hearing on the report was conducted by the Examiner on behalf of the Metropolitan King County Council.
3. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's report to the Examiner for the March 7 and 21, 2007, public hearing sessions and the statement of facts contained in Proposed Ordinance No. 2007-0018. The Department's report and the proposed road vacation ordinance will be attached to those copies of this report and recommendation that are submitted to the County Council.
4. Maps showing the vicinity of the proposed vacation and the specific area to be vacated appear in the hearing record as exhibit nos. 9 and 10.
5. The subject right-of-way portion is currently maintained for public use, but its function will be adequately replaced by a proposed alternative public access road connecting Southeast Tanner Road and Southeast North Bend Way. Dedication and improvement of such replacement road are recommended as conditions precedent to the effectiveness of the recommended vacation, as provided in the proposed ordinance.¹
6. Upon such replacement, vacation of the subject right-of-way would have no adverse effect on the provision of access and fire and emergency services to the abutting subject property and surrounding area.

¹ Other recommended conditions would require relocation of utilities or retention of utility easements in the proposed vacation area, and continuance of temporary provisions for non-motorized public use pending improvements on Southeast North Bend Way. Also see Finding 8.

7. Upon such replacement, the right-of-way would no longer be necessary for the present or future public road system for travel or utilities purposes (subject to the establishment of utility easements as necessary; see following Finding).
8. Easements are necessary to be retained for the construction, repair and maintenance of existing public utilities and services, unless they are relocated outside of the right-of-way to be vacated. The proposed ordinance requires such relocation or the recording of pertinent easements.
9. The compensation required by law to be paid as a condition precedent to vacation of this road has been deposited with King County.

CONCLUSION:

1. Upon the aforementioned road replacement, the right-of-way segment subject to this petition will be useless as part of the King County road system, and the public will be benefited by its vacation.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2007-0018 to vacate the subject road right-of-way.

RECOMMENDED May 15, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED May 15, 2007, to the following parties and interested persons:

Cori Berhold
21203 SE 29th St.
Sammamish WA 98075

Merlin Berhold
21203 SE 29th St.
Sammamish WA 98075

Comcast
Attn: Jim Nies
4020 Auburn Way N.
Auburn WA 98002

Bill Moffett
North Bend Industrial Park LLC
1911 SW Campus Dr., #733
Federal Way WA 98023

Puget Sound Energy
Attn: Judy McCollum
P.O. Box 97034
Bellevue WA 98009

Qwest
Attn: Don Dauphiny
1550 Newport Way NW
Issaquah WA 98027

Sallal Water Association
Attn: Paul Tredway
PO Box 378
North Bend WA 98045

Verizon Communications
Attn: Debbie Condron
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Kim Claussen
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MS KSC-NR-0600

Sarah Gagnon
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MS KSC-NR-0503

Nancy Gordon
KCDOT/D&C
MS KSC-TR-0431

David Gualtieri
KCDOT/CIP & Planning Sec.
MS KSC-TR-0317

Denise Hauck
KC Dept. of Exec. Svcs.
MS ADM-ES-0500

Bill Hintz
KC DOT, Rd. Maint.
MS RSD-TR-0100

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MS BOA-EX-2000

Kelly Whiting
KC DOT, Rd. Svcs. Div.
MS KSC-TR-0231

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **May 29, 2007**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **June 5, 2007**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MARCH 7 AND 21, 2007, PUBLIC HEARING SESSIONS ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2498.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller, and Kelly White, representing the Department, and Merlin Berhold and Cori Berhold.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Report to the Hearing Examiner for the March 7, 2007 hearing, with 15 attachments
- Exhibit No. 2 Petition transmittal letter, dated January 14, 2004 to KC Department of Transportation, from Clerk of the Council
- Exhibit No. 3 Petitioner's cover letter stating reason for the request, dated January 12, 2004
- Exhibit No. 4 Letter to Tony Phillips from Bill Moffet of B.N.S.F. Railroad dated October 8, 2003 stating that they will not take a position on this
- Exhibit No. 5 Petition for vacation of a County road including legal descriptions of petitioner's properties
- Exhibit No. 6 Map that was included with the petition
- Exhibit No. 7 Copy of filing fee – check #2369 from the petitioner
- Exhibit No. 8 Receipt #00652 from the King County Council for the filing fee
- Exhibit No. 9 Vicinity map from Thomas Brothers, page 661, grid A-4
- Exhibit No. 10 Map depicting vacation area, proposed new access via tax parcel #142308-9182 and current access that will remain
- Exhibit No. 11 Letter to Bill Moffett of B.N.R. from Road Services dated February 2, 2004 indicating that King County has no rights/interest in releasing right-of-ways used for road purposes within the B.N.R. right-of-way
- Exhibit No. 12 Letter to Bill Moffett of B.N.R. from Road Services dated September 22, 2005 identifying DOT recommendation and request for compensation
- Exhibit No. 13 Compensation worksheet
- Exhibit No. 14 Copy of compensation check in the amount of \$54,048.77 from North Bend Industrial Park along with King County receipt no. 05726
- Exhibit No. 15 Deposit receipt for \$54,048.77 dated November 29, 2006
- Exhibit No. 16 Letter to Paulette Norman from PugetWestern, Inc. dated December 13, 2005 stating that tax parcel #1423089073 will need to retain access to North Bend Way as shown on enclosed map
- Exhibit No. 17 Copy of compensation check in the amount of \$15,642.36 dated November 28, 2005
- Exhibit No. 18 Deposit receipt for \$15,642.36 dated December 15, 2005
- Exhibit No. 19 Refund worksheet
- Exhibit No. 20 Transmittal letter to the Clerk of the Council providing recommendation of KC DOT and county road engineer
- Exhibit No. 21 Letter to Bill Moffett of North Bend Industrial, LLC from Road Services dated May 19, 2006 identifying DOT's requirements for the alternate access onto North Bend Way and the bicycle lane
- Exhibit No. 22 Copy of plans submitted by the petitioner for the alternate access onto North Bend Way and the bicycle lane
- Exhibit No. 23 Ordinance transmittal letter dated December 19, 2006 from the King County Executive to Councilmember Larry Phillips
- Exhibit No. 24 Proposed Ordinance 2007-0018
- Exhibit No. 25 Fiscal Note
- Exhibit No. 26 Notice of hearing
- Exhibit No. 27 Affidavit of posting for the hearing
- Exhibit No. 28 Affidavit of publication for the hearing

PTD:gao

V-2498 RPT